Appendix A

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. 2713

CENTRAL VERMONT RAILWAY, INC., Et Al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Argued July 9, 1959
Finally submitted on briefs, November 1, 1959
Decided March 7, 1960

Before:

WATERMAN, *Circuit Judge*,
FOLEY and GIBSON, *District Judges*.

Horace H. Powers, St. Albans, Vermont; (J. Raymond Hoover, Washington, D. C.: J. Edgar McDonald, New York City; William H. Parsons, Washington, D. C.: John F. Reilly, New York City, of counsel) *for Plaintiffs*.

Robert W. Ginnane, General Counsel; H. Neil Garson, Assoc. General Counsel, *for Interstate Commerce Commission*.

Robert A. Bicks, Acting Asst. Atty. General; John H. D. Wigger, Attorney, Department of Justice, Washington, D. C.; Louis G. Whitcomb, U. S. Attorney for Vermont, Rutland, Vermont, *for United States of America*.

John D. Carbine, Rutland, Vermont; E. B. Ussery, Columbia, South Carolina (Harvey L. Golden, Joseph J. Lipton, Columbia, South Carolina, of counsel) *for Interveners*.

WATERMAN, *Circuit Judge*:

Ninety-one railroads [1] join in this action to enjoin and annul certain orders of the Interstate Commerce Commission,[2] entered pursuant to a decision of the full Commission reported at 303 ICC 743 (May 7, 1958). A single question is presented to this court: Does the Commission have jurisdiction over the foreign factor of a combination international rate when the foreign factor is a proportional rate from the points of origin to a border interchange within the United States?

The rates in question pertain to the carriers of asbestos, a transportation originating in the Province of Quebec, Canada, and terminating at various points in North and South Carolina. The principal source of asbestos for United States manufacturers of asbestos products is a narrow belt of land in southern Quebec extending northeast and southwest approximately fifty miles west of the Maine border. Railroad appears to be the principal method of transporting this asbestos to its American users. The asbestos area of southern Quebec is served by two Canadian railroads, the Canadian National and the Quebec Central. Asbestos intended for consignees in the southern-Atlantic states is carried by the Canadian lines to East Alburg, Vermont, and Newport, Vermont (points respectively 3 and 5 miles south of the international boundary) where the cars are turned over to American railroads in an "interchange" operation. Customs inspection on incoming railroad freight occurs at East Alburg and at Newport; and, to that extent at least, these towns may be regarded as border points.

The Canadian carriers have joined with American carriers in the publication of joint rates for the carriage of asbestos to points in the middle-Atlantic states and the middle-west. However, for the carriage of asbestos to the

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[1] Originally ninety-eight railroads joined as plaintiffs. However, on April 6, 1959, Judge Gibson issued an order permitting seven southern railroads to withdraw.

[2] Two orders are attacked. They are an Order dated May 7, 1958 that required the railroads to cease and desist from exacting rates held to be unreasonable and prejudicial in the Commission's decision of the same date; and an Order dated February 19, 1959, that amended the effective date of the May 7, 1958, Order.

southern-Atlantic states the carriers concerned have not published joint rates but instead have published combination rates.[3] One factor of these combination rates is a proportional rate[4] pertaining to the transportation from the mines in Quebec to the Vermont points of interchange. The other factor is a local rate pertaining to the transportation from these points of interchange to the various southern destinations.

In 1951 Thermoid Company, Southern Division, a manufacturer of asbestos textile products, located in Charlotte, North Carolina, filed with the Commission a complaint alleging that the combination rates for the carriage of asbestos from mines located along the lines of the Quebec Central to Charlotte were unreasonable and were prejudicial in comparison with the joint rates given complainant's competitors in the middle-Atlantic states and the middle-west. As the complaint wound its way upward through the various levels of Commission adjudication, four additional complaints of a similar nature were consolidated with it.[5] In its decision the Commission accepted complainants' contentions. It held that the Quebec-Carolina rates were unreasonable and prejudicial and ordered reparation to the extent that the rates exceeded the rates for comparable distances charged complainants' competitors in the middle-Atlantic states and the middle-west.

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[3] In railroad parlance a *joint* rate on a through route differs from *a combination* rate on a through route in that a joint rate is reached through an agreement of the participating carriers and each participating carrier is jointly and severally liable for the entire rate. See *Louisville and N. R. R. v. Sloss-Sheffield Co.*, 269 U. S. 217 (1925) at pp. 231-234.

[4] A *proportional* rate covers a portion of a through route and differs from a *local* rate between the same points in that the proportional rate applies only to transportation on the through route. See *Lewis-Simas-Jones Co. v. Southern Pacific R. Co.*, 283 U. S. 654, 663 (1931). Apparently the rates south of East Alburg and Newport to the Carolinas are merely local rates.

[5] The net effect of the consolidation was to increase the number of complainants to four so that the group then included manufacturers of asbestos products in Charlotte, Davidson and Marshville, North Carolina, and North Charleston, South Carolina and to expand the complaint so as to bring into question the rates from the mines along the Canadian National as well as those from the mines along the Quebec Central.

The four complainants in the proceedings before the Commission have intervened in this action under 28 U. S. C. §2323.

We are, of course, without authority to consider the validity of the Commission's orders allowing reparations;[6] and plaintiffs here do not argue that the Commission's findings as to the unreasonableness and prejudicial character of the Quebec-Carolina rates were without substantial evidentiary basis if those rates are to be viewed as an indivisible entity. Plaintiffs' argument before this court is confined to the contention that the Commission exceeded its power in failing to limit its jurisdiction to the local rate factor from the points of border i. erchange in Vermont southward to the Carolinas.

The Commission's power with respect to transportation wholly by railroad is set forth in Sections 1(1)(a) and 1(2) of the Interstate Commerce Act, 49 U.S.C. §§1(1)(a). and 1(2). These sections in pertinent part read as follows:

"Carriers subject to regulation

"(1) The provisions of this chapter shall apply to common carriers engaged in—

"(a) The transportation of passengers or property wholly by railroad, ...

. . . "from or to any place in the United States to or from a foreign country, *but only insofar as such transportation* or transmission *takes place within the United States.*"

"Transportation subject to regulation

"(2) The provisions of this chapter shall also apply to such transportation of passengers and property . . . *but only insofar as such transportation or* transmission *takes place within the United States* . . . (Italics supplied).

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[6] Under 28 U. S. C. §2321 the jurisdiction of a three-judge district court extends to all orders of the Commission save those ". . . for the payment of money or the collection of fines, penalties and forfeitures . . . ." Under 49 U. S. C. §16(a) an action for the enforcement of a reparations order is to be brought by the complainant in one of several district courts or in a state court. In *United States v. ICC*, 337 U. S. 426 (1949) the Supreme Court indicated that the activities of a three-judge district court were to be carefully confined to those expressly provided for by Congress.

As the Commission emphasized in its decision in the present case, it is now firmly established that American rail carriers have a clear alternative with respect to the manner of publishing rates applicable to international transportation. They may choose to publish rates applicable only to that portion of the transportation which they themselves perform; or they may join with the foreign carrier and publish a joint rate for the entire transportation, thereby assuming joint and several liability for any unlawfulness in the rate agreed upon. Thus it is well settled that the Commission does not have power to require carriers to enter into joint rates for international transportation. See *Lewis-Simas-Jones Co. v. Southern Pac. R. Co.*, 283 U. S. 654, 660 (1931); *Fruit Importers v. Atlantic Coast Line R. Co.*, 188 I. C. C. 520, 523 (1932); *International Nickel Co. v. Director General*, 66 I. C. C. 627 (1922). However, it is equally well settled that the Commission does have power to pass upon the legality of existing joint rates on international transportation; and, in connection with this power, in a proper case, it may order the American carriers to cease participation in these rates, and to pay reparations. This was the Commission's interpretation prior to the 1920 amendments to Sections 1(1) and 1(2), which for the first time expressly limited the Commission's jurisdiction to transportation "only insofar as such transportation . . . takes place within the United States." [7] See

[7] Prior to February 28, 1920 Section 1(1) declared the Act to be applicable to carriers engaged in any of four types of international transportation: (1) from the United States to an adjacent foreign country; (2) from the United States through a foreign country to the United States; (3) from the United States to a foreign country when shipment is being carried from an originating point in the United States to a port of transshipment; (4) from a foreign country to the United States when the shipment is being carried to a terminating point in the United States from a port of entry either in the United States or in an adjacent foreign country. In *Galveston, H. & S. A. R. Co. v. Woodbury*, 254 U. S. 357 (1920), a case decided under Section 1(1) as it existed prior to the 1920 Amendments, the Supreme Court held that transportation *from* an adjacent foreign country to the United States was within the Commission's jurisdiction under the provisions relating to the transportation from the United States to an adjacent foreign country. On February 28, 1920, (Section 400 of the Transportation Act of 1920, 41 Stat. 474) Section 1(1) was amended to apply to transportation: (1) from the United States through a foreign country to the United States, and (2) from or to the United States to or from

Black Horse Tobacco Co. v. Illinois Central R. Co., 17 ICC 588, 590 (1910). The Commission quickly held that the 1920 amendments did not affect this power that had been exercised over existing joint international rates, *International Nickel Co. v. Director General*, 66 ICC 627 (1922). The Supreme Court has upheld the Commission's interpretation in two cases, *News Syndicate Co. v. New York Cent. R. Co.*, 275 U. S. 178 (1927) and *Lewis-Simas-Jones Co. v. Southern Pac. R. Co.*, 283 U. S. 654 (1931).

The rates the Commission found unreasonable and prejudicial in the present case, however, were not joint rates, but were combination rates. The Canadian carriers published proportional rates to East Alburg, Vermont, and Newport, Vermont, the interchange points; and the American carriers published local rates for the remainder of the transportation. The Commission does not dispute plaintiffs' statement that there are no facilities for interchange available between the international boundary and East Alburg and Newport. Nor does the Commission dispute that, as to shipments under the assailed combination rates, the Canadian carriers operate within the United States only for the purpose of turning over the asbestos to American carriers.[9] In its decision the Commission made no findings that the local rates south of the interchange points were unreasonable or prejudicial. The Commission, nevertheless,

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a foreign country; but only insofar as these two types of international transportation take place within the United States. Section 1(2) quoted in the opinion, was a new section added by the 1920 Act.

[8] There is language in *News Syndicate*, *supra*, at 186-87, and *Lewis Simas-Jones*, *supra*, at 663, which might be construed as indicating that the Commission would be without jurisdiction over the joint rate if the American carrier had also published a rate for the American portion of the transportation. The Commission, however, has subsequently held that it has jurisdiction over joint rates irrespective of whatever additional rates may be filed. *Carstens Packing Co. v. Great Northern R. Co.*, 264 ICC 164 (1945); see also Cyanamid and Cyanide from Niagara Falls, Ont., 155 I. C. C. 488 (1929); Publication of Rates between United States and Canada, 147 ICC 778 (1928).

[9] Because the Canadian rate is a proportional rate, it does not apply to any shipments to American consignees at points between the international boundary line and the interchange points, nor does it apply to shipments to be delivered by Canadian carriers to consignees located at the interchange points.

held that it had power to review the entire transportation charge—from mines in Quebec to consignees in the Carolinas—because the interchange occurred within the United States.[10] The Commission stated its position in the following words:

> "The contentions of the defendants are based on the assumption that since Newport and East Alburgh are ports of entry, they are, for all practicable purposes, border points, and that the rates therefrom to the considered destinations conform to the first alternative mentioned above. [The Commission's reference is to publication of rates to and from the international boundary] The facts indicate otherwise. Newport and East Alburgh are about 5 and 3 miles, respectively, south of the international boundary, and the proportional rates maintained by the Canadian lines to those points obligate those carriers to provide substantial transportation service within the United States. The act makes no distinction between domestic and foreign carriers in this respect. It applies to all common carriers by railroad to the extent that such transportation takes place within the United States."

First, it should be observed that although the Commission stated that it was regulating transportation which took place within the United States, it made no effort, when it handed down its finding as to the unreasonableness of the assailed transportation charge, to distinguish between that portion of the charge covering the transportation which took place in the United States and that portion covering the transportation within Canada.[11] It is now settled that the Commission need not make this distinction if the inter-

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[10] As to those shipments where the interchange occurred at St. Johns, Quebec, the Commission held that the Canadian carrier was not liable for reparation. Apparently, however, the American carriers were liable for reparation even as to these shipments.

[11] In its decision in the present case the Commission states, at p. 754, that its jurisdiction here exists "regardless of the manner of rate publication." We gather this to mean that the Commission would not have reached a different result if the Canadian carriers had published a proportional rate from the points of origin to the border and an additional, and meaningless, proportional rate from the border to the border points of interchange.

national transportation is conducted on the basis of a joint rate because the American carriers have elected to become jointly and severally liable for the entire transportation charge, and because a contrary rule would force the Commission to rely upon the unpublished and possibly unverifiable divisions of the joint rate between the American carrier and the foreign carrier. This is not the situation where the American carrier and the foreign carrier each publish rates to and from a border point where interchange occurs. In this latter situation, unless the rate of the foreign carrier is left to regulation by the foreign country the phrase "but only insofar as such transportation takes place within the United States" will be drained of all meaning. Surely the fact that interchange occurs a few miles on one side of the boundary as opposed to a few miles on the other side, is a fortuitous event, an event upon which Congress could hardly have intended the Commission's jurisdiction to hinge. It is our belief that the Commission would give short shrift to an argument that it had no jurisdiction over the American factor if the interchange occurred at a border point a few miles within the foreign country.[12]

Second, if the Commission's action in the present case were approved by us it would follow that in situations where the foreign factor is the unreasonable factor American carriers will be held liable for a portion of overcharges that they had no part in formulating.

Third, the Commission would appear to have been in error when, in its decision in the instant case, it stated that its prior holdings support its present position. The Commission relied upon *Fruit Importers v. Atlantic Coast Line R. Co.*, 203 ICC 139 (1934); *Newsprint Paper to Detroit*, 161 ICC 63 (1930); *Simpson Co. v. Grand Trunk W. R. Co.*, 129 ICC 430 (1927); *Larrowe Milling Co. v. Chatham W. & E. E. R. Co.*, 52 ICC 145 (1919); *Iron and Steel Wire, Buffalo, N. Y. to Kitchener, Ont.*, 294 ICC 515 (1955); and to a lesser extent upon *Control of Hereford Ry. Co.*, 99 ICC 7 (1925), and *Status of Napierville Junction R. Co.*, 266 ICC 471 (1946). In *Fruit Importers, Newsprint, to Detroit,*

[12] See note 10, *supra*.

Simpson Co., and *Wire, Buffalo to Kitchener*, the assailed rates were joint rates over which the Commission's jurisdiction is conceded. In *Larrowe Milling* the shipper assailed carload minima concurred in by both the Canadian and American carriers, thus presenting a situation analogous to a joint rate. In *Control of Hereford Ry. Co.*, a case involving the application of an American carrier to acquire control of a line 52.85 miles in length of which all but 0.67 miles were in Canada, and to abandon operations along this line, the Commission held it had authority to approve the acquisition under Section 5(a) but that its abandonment jurisdiction extended only to the trackage within the United States. In *Napierville Junction* the Commission held that a Canadian line whose trackage ended at the international boundary was not subject to the provisions of the Act even though its crews and equipment did conduct some operations on the one mile of track in the United States between the border and Rouses Point, N. Y. These last two cases hardly support the expanded interpretation of its jurisdiction which the Commission has advanced in the present case.

Not only do the cited decisions fail to support the Commission's present position, but, furthermore, whenever the problem has previously been faced the Commission has indicated that it lacked jurisdiction to review the foreign factor of a combination international rate.[13] In *Albee Fruit*

[13] *Watab Paper Co. v. Canadian National R. Co.*, 152 ICC 265 (1929) appears to be the single exception to the above statement. Watab involved shipments of pulpwood from Manitoba points of origin approximately thirty miles north of the border to a consignee in central Minnesota. After reaching the interchange point of Warroad, Minnesota, approximately six miles south of the border, the shipments were misrouted so as not to travel along the least expensive routing. In computing damages the Commission held that the factor from the Manitoba points of origin to Warroad was unreasonable. Jurisdiction to make such a holding was premised upon a Section 4 violation, resulting from the fact that the rates from the Manitoba points of origin to Warroad were greater than the rate from the points of origin to International Falls, Minnesota, a point approximately seventy-five miles east of Warroad and a point which shipments from the points of origin could reach only by routing through Warroad. However, the Commission recognized that these circumstances were most unusual, stating at p. 268: "Where the rate from a point in Canada to a destination in the United States *is based on a combination of the rates to and from a border point within the United States, our jurisdiction ordinarily extends only to the rate within the United States.*" (Italics supplied).

Co. v. Atlantic Coast Line R. Co., 293 ICC 785. *Montreal* consignees of fresh fruit from the Florida area filed complaints as to the combination rates made over Rouses Point, N. Y. In limiting its jurisdiction the Commission stated: "The rates here assailed are combination rates based on border points, and the only factors in such combinations over which we have jurisdiction are those applying to such border points." *Hoffman-Taff, Inc. v. St. Louis S. F. R. Co.*, 279 ICC 710, 712 (1950), involved rates on shipments of aqua ammoniac from originating points in Canada to Springfield, Missouri. The rates were combination rates made over Detroit and Port Huron, and apparently the complaint attacked only the Canadian portion of the rates. The Commission stated: "On the instant traffic, the United States carriers concerned elected not to join in the publication of single-factor through rates, and the combinations on Detroit and Port Huron, which for all practical purposes are international border points, applied. Only the Canadian rates, as factors of the through combinations are assailed. The defendants operating within this country are not answerable for those rates, but only for the rate from the border points to destination and which is not here assailed. It follows that the complaint assails rates over which this Commission has no jurisdiction." In *E. J. Stanton v. Atchison, T. & S. F. R. Co.*, 258 ICC 315 (1944), the Commission, after holding the American factors to be reasonable, refused to pass upon the Canadian factors of combination rates on the shipment of lumber from Los Angeles to the Maritime Provinces made over Port Huron, Detroit, Buffalo, and Rouses Point. For cases of similar import see *Dow Chemical Co. v. Alton & S. R. Co.*, 284 ICC 365 (1952); *Crelinsten v. Railway Express*, 201 ICC 284 (1934); *Fruit Importers v. Atlantic Coast Line R. Co.*, 188 ICC 520 (1932). In summary, then, the Commission has consistently interpreted its statute in a manner contrary to its interpretation in the present case. This consistent interpretation ought not to be set aside, either by the courts or by the Commission, without a strong showing to justify departure. *United States v. Leslie Salt Co.*, 350 U. S. 383, 395-97 (1956); *FTC v. Bunte Bros.*, 312 U. S. 349, 351-52 (1941).

It is contended that support for the Commission's present interpretation may be found in *Great Northern R. Co. v. Sullivan*, 294 U. S. 458 (1935). The *Sullivan case* involved the complaint of a North Dakota consignee of lignite mined in Alberta, Canada. The shipments moved on a combination rate made over an international-border point located within the United States. The Commission awarded reparations upon a finding that the American factor was unreasonable. The Supreme Court reversed, holding that an award of reparations was improper without a finding that the entire rate, *i. e.*, the sum of the American and Canadian factors, was excessive. Thus it is argued that *Sullivan* equated combination international rates with joint international rates for purposes of the Commission's jurisdiction. We believe that a closer reading of the *Sullivan case* will reveal that the Court there was not dealing with the Commission's jurisdiction, but rather with the consignee's proof of injury. As we read the case the Court held that a complainant seeking reparations by attacking the American factor of a combination international rate must not only demonstrate the unreasonableness of the factor over which the Commission has jurisdiction but also the unreasonableness of the sum of the combined rates.

Finally, the Commission argues that unless we accept its present interpretation there will be left an unregulated "no-man's land" between the international boundary and the interchange points. This argument is unpersuasive. The issue here is whether the Commission has jurisdiction over certain rates, not whether the Commission has jurisdiction over the Canadian carriers. If, for example, the Canadian carriers sought to abandon service between the interchange points and the border, or if they sought to lease their trackage in the United States to another carrier, the Commission clearly would have jurisdiction. See *Control of Hereford Ry. Co.*, 99 ICC 7 (1925); *Lease of Line by Canadian Pac. R. Co.*, 105 ICC 575 (1926). We merely hold that the carriage of freight by rail on a proportional rate from a point of origin in Canada over the international boundary to a border point within the United States for the purpose of interchange is not such transportation within the United

States as will give the Commission jurisdiction over the foreign factor of the combination rate.

The orders described in note 2, *supra*, are annulled and set aside, and the cause is remanded for further proceedings in conformity with this opinion.

STERRY R. WATERMAN,
U. S. Circuit Judge.

I concur:

JAMES T. FOLEY,
U. S. District Judge.

I concur:

ERNEST W. GIBSON,
U. S. District Judge.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. 2713

CENTRAL VERMONT RAILWAY, INC., Et Al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

ORDER

The motions for reconsideration filed March 17, 1960 (1) on behalf of the United States of America and the Interstate Commerce Commission, defendants, and (2) on behalf of intervening defendants, are severally denied.

STERRY R. WATERMAN,
U. S. Circuit Judge.

JAMES T. FOLEY,
U. S. District Judge.

ERNEST W. GIBSON,
U. S. District Judge.

Endorsed: Filed March 26, 1960.

ARNOLD A. MURRAY,
Clerk.

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. 2713

CENTRAL VERMONT RAILWAY, INC., Et Al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

ORDER

Upon application of the intervening defendants, H. K. Porter Company, Inc.—Thermoid Division—Successor in interest to Thermoid Company—Southern Division; Raybestos-Manhattan, Inc., General Asbestos and Rubber Division; Union Asbestos and Rubber Company; and Carolina Asbestos Company, it appearing to the satisfaction of the Court that good cause has been shown for the enlargement of the time allowed for docketing this cause in the Supreme Court of the United States, it is hereby

ORDERED, that the time for docketing this cause in the Supreme Court of the United States be extended from July 5, 1960 to July 23, 1960.

DATED at Brattleboro, this 14th day of June, 1960.

ERNEST W. GIBSON,
United States District Judge.

Endorsed: Filed June 14; 1960.

ARNOLD A. MURRAY,
Clerk.

Appendix D

INTERSTATE COMMERCE COMMISSION

No. 30846

THERMOID COMPANY, SOUTHERN DIVISION

v.

BALTIMORE & OHIO RAILROAD COMPANY Et Al.

Submitted March 9, 1953 Decided May 25, 1953.

Rates on crude asbestos and asbestos fibre, in carloads, from Black Lake, Coleraine, and Thetford Mines, Province of Quebec, Canada, to Charlotte, N. C., found not shown to have been or to be unreasonable, but to be unduly prejudicial. Undue prejudice ordered removed, and reparation denied.

H. V. Fleming for complainant.

Paul F. Robinson, J. A. Kane, and *J. Edgar McDonald* for defendants.

REPORT OF THE COMMISSION

Division 3, Commissioners Patterson, Johnson, and Knudson by Division 3:

Exceptions to the examiner's proposed report were filed by the complainant. Our conclusions differ from those recommended by the examiner. Exceptions and suggested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The complainant is a corporation engaged at Charlotte, N. C., in the manufacture, sale, and distribution of asbestos textile fabrics. By complaint filed on June 22, 1951, it alleges that the rates charged for the transportation of nume-

rous carload shipments of crude asbestos and asbestos fibre from Black Lake, Coleraine, and Thetford Mines, Province of Quebec, Canada, to Charlotte were and are unreasonable and unduly prejudicial. We are asked to prescribe lawful rates for the future and to award reparation on shipments made during the statutory period and *pedente lite*.

The assailed rates[1] are combinations of rates to and from Newport, Vt., a port of entry near the Canadian border. The rates from the Canadian origins to Newport are 53 cents on crude asbestos and 28 cents on asbestos fibre, minimum weight 40,000 pounds, and the rates from Newport to Charlotte on the respective commodities are $1.41 and $1.06, minimum 30,000 pounds.

At the hearing the defendants suggested that the complaint be limited to the rates from Newport to Charlotte on the premise that otherwise this Commission would be without jurisdiction. The complainant refused to so limit the complaint primarily because the allegations of unlawfulness were based in part on the measure of the joint rates maintained by some of the defendants and other rail lines on the same commodities from the same Canadian origins to Chicago and Waukegan, Ill., and Milwaukee, Wis. Under the Interstate Commerce Act our jurisdiction applies to this transportation only to the extent that it takes place in the United States. It is well settled that the railroads in this country have a clear alternative with respect to their participation in international traffic. They may publish rates to or from the border, in which event they are answerable only for those rates, or they may participate in joint international rates and thus become jointly and severally liable for any unlawfulness in such rates. *News Syndicate Co. v. New York Central R. Co.*, 275 U. S. 179; *Buckerfield's v. Atchison, T. & S. F. Ry. Co.*, 280 ICC 15, 18. So far as the instant traffic is concerned, the defendants have not entered into joint rates from the Canadian origins to Charlotte.

Although the complaint does not specifically attack the rates from Newport to Charlotte separate and apart from the combinations of rates to and from Newport, both the

[1] Rates are stated in amounts per 100 pounds, and are those in effect just prior to the general increases authorized on March 12, 1951.

complainant and the defendants introduced evidence relating to the rates from Newport. For example, the complainant compares the rate of $1.06 on asbestos fibre from Newport to Charlotte, 972 miles, with a rate of 72 cents, minimum 50,000 pounds, on woodpulp from Berlin, N. H., to Charlotte, 965 miles. Other rates on woodpulp from Berlin to various points in southern territory range from 66 to 89 cents for distances of from 804 to 1,575 miles. The rate of $1.06 is compared also with a rate of 81 cents, minimum 30,000 pounds, on flax mill waste or sweepings from Lee, Mass., to Pisgan Forest, N. C., 851 miles, and a rate of 73 cents, minimum 50,000 pounds, on logs, native wood, from Beecher Falls, Vt., to Hampton, S. C., 1,340 miles. At the time of the hearing all of these commodities were rated eighth class, in carloads, in the southern classification, but the complainant's witness had no knowledge of the average loadings or the movement, if any, under the compared rates.

Most of the asbestos fibre used by the complainant consists of No. 3 or spinning fibre, which has a value ranging from about $320.00 to $525.00 per net ton, f. o. b. mines. It also receives an occasional carload of crude asbestos, which has a value of from $675.00 to $1,300.00 per ton. Very little evidence was introduced with respect to the rate on the latter commodity, except that certain unidentified rail carriers maintain a joint rate of $1.32, minimum 40,000 pounds, on crude asbestos from the Canadian origins to Milwaukee and Waukegan.

The rate on asbestos fibre from Newport to Chicago, Milwaukee, and Waukegan is $1.14, minimum 30,000 pounds, as compared with the rate of $1.06 to Charlotte. The rate of $1.06 from Newport to Charlotte is a commodity rate which is 10 cents less than the class-rate basis, whereas the defendants show that class rates generally apply to other destinations in southern territory. The defendants refer also to numerous proceedings before this Commission in which carload ratings higher than eighth class have been prescribed or approved on various commodities with values within the range of those on asbestos fibres.

Numerous rail carriers, including some of the defendants herein, participate in joint international rates of $1.01

on asbestos fibre and $1.32 on crude asbestos, minimum 40,000 pounds, from Black Lake, Coleraine, and Thetford Mines to Chicago, Milwaukee, and Waukegan. The short-line distances from Thetford Mines, for example, are 992 miles to Chicago, 969 miles to Milwaukee, and 1,019 miles to Waukegan, as compared with the short-line distances of 1,080 miles from Thetford Mines to Charlotte. Shipments to Chicago, Milwaukee, and Waukegan generally move over the lines of the Quebec Central Railway Company to Sherbrooke, Quebec, thence the lines of the Canadian Pacific Railway Company to Detroit, Mich., and the lines of connecting carriers beyond, for distances ranging from 1,000 to 1,143 miles to Chicago, from 1,071 to 1,245 miles to Milwaukee, and from 1,085 to 1,209 miles to Waukegan.

In the sale of its products the complainant is in competition with manufacturers at Chicago, Milwaukee, and Waukegan, and the differences in the freight rates are an important factor in making sales.

The complainant contends that the foregoing rate adjustment results in undue preference of its competitors at Chicago, Milwaukee, and Waukegan, and in undue prejudice to it. In April, 1949, the southern rail lines proposed the establishment of joint rates, lower than the combinations then in effect from the Canadian origins to Charlotte, but the proposal was disapproved by the Canadian lines. So far as appears, the service rendered in connection with this traffic to Charlotte is no greater or more expensive than that, on the average, to Chicago, Milwaukee, and Waukegan.

The defendants state that the rates from Black Lake, Coleraine, and Thetford Mines to Chicago, Milwaukee, and Waukegan were originally made with relation to the rates from Sherbrooke, and that the rates from the latter point to these destinations reflected water-competitive conditions then existing on the Great Lakes. There is no evidence, however, that there is any current or prospective water competition which might justify rates to Chicago, Milwaukee, or Waukegan on a lower level than to Charlotte.

The claim is made by the defendants also that the Canadian rail lines constitute a complete route from the Quebec origins to Chicago and Milwaukee, thereby controlling

the rates to those points, and that the United States lines must join in those rates or forego the traffic. We cannot compel the Quebec Central or any of the other defendants to join in the establishment of joint rates from the Canadian origins to Charlotte. However, that carrier, which is a subsidiary of the Canadian Pacific[2], and the latter carrier effectively participate in the rates to both Chicago, Milwaukee, and Waukegan, and to Charlotte. Newport is about 5 miles south of the Canadian border, and the Quebec Central and Canadian Pacific are the only rail carriers serving that point. Traffic therefrom to Charlotte must move for some distance beyond Newport on the Canadian Pacific before connection can be made with a United States carrier. It is thus within the power of the Canadian Pacific to put an end to the alleged undue prejudice by refusing to continue to participate in the joint rates to Chicago, Milwaukee, and Waukegan herein shown to be preferential, or, especially since the United States carriers appear to be willing, by reducing the rate to Charlotte. *Peters Cartridge Co. v. Director General*, 73 ICC 311, 314.

The evidence is clear that the complainant's competitors at Chicago, Milwaukee, and Waukegan are being unduly preferred to the undue prejudice and disadvantage of the complainant. There is no showing, however, with sufficient particularity to warrant an award of reparation, that the complainant has been damaged by reason of any undue prejudice which may have existed in the past.

We conclude that the assailed rates are not shown to have been or to be unreasonable, but that they are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed the joint rates that are or hereafter may be concurrently maintained on like traffic from Black Lake, Coleraine, and Thetford Mines to Chicago, Milwaukee, and Waukegan. An order for the future will be entered.

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[2] See *Lease of Line by C. P. Ry.*, 105 ICC, 575, 576.

Appendix E

INTERSTATE COMMERCE COMMISSION

No. 30846[1]

THERMOID COMPANY, SOUTHERN DIVISION v. BALTIMORE & OHIO RAILROAD COMPANY, Et Al.

Decided May 7, 1958

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1. Rates on crude asbestos and asbestos fiber from Danville, St. Malachie, Warwick, Black Lake, Coleraine, Robertson, Thetford Mines, and East Broughton, Quebec, Canada, to Charlotte, Davidson, and Marshville, N. C., and North Charleston, S. C., and on asbestos waste, refuse, and shorts from the same origins to Davidson, found to have been and to be unjust and unreasonable, and for the future found to be unduly prejudicial. Reparation awarded, and defendants required to remove the unlawfulness found to exist.
2. Commission found without jurisdiction to prescribe just and reasonable joint through international rates for the future. Prior findings, 288 ICC 793, modified.

Appearances as shown in prior report, and:

E. B. Ussery, Harvey L. Golden, and *H. V. Fleming* for complainants.

J. Edgar McDonald, R. C. Gill, Donal L. Turkal, James L. Tapley, and *J. Raymond Hoover* for defendants.

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[1] This report embraces also No. 31683, Raybestos-Manhattan, Inc., *General Asbestos & Rubber Division v. Baltimore & Ohio Railroad Company et al.*; No. 31684, *Thermoid Company, Southern Division v. Same*; No. 31685, *Union Asbestos & Rubber Company v. Same*; and No. 31686, *Carolina Asbestos Company v. Same.*

REPORT[2] OF THE COMMISSION

By the Commission:

Exceptions were filed by the defendants to the report proposed by the examiner, the complainants replied, and the issues were orally argued before us. Our conclusions differ in part from those recommended by the examiner. Exceptions and requested findings not discussed herein nor reflected in our findings on conclusions have been considered and found not justified.

In the title proceeding, the complainant, a corporation engaged at Charlotte, N. C., in the manufacture, sale, and distribution of asbestos textile products, alleges by complaint filed on July 22, 1951, that the rates charged for the transportation of numerous carload shipments of crude asbestos and asbestos fiber from Black Lake, Coleraine, and Thetford Mines, Quebec, Canada, to Charlotte were and are unjust, unreasonable, and unduly prejudicial. We are asked to prescribe lawful rates for the future and to award reparation on shipments made during the statutory period and *pendente lite*.

In the prior report in that proceeding, 288 ICC 793, division 3 found that the assailed rates had not been shown to have been or to be unjust or unreasonable, but that they are and for the future will be unduly prejudicial to the extent that they exceed or may exceed the joint rates that are or hereafter may be concurrently maintained on like traffic from the same origins to Chicago and Waukegan, Ill., and Milwaukee, Wis. Reparation sought was denied, and an order was entered requiring removal of the undue prejudice found to exist. Upon petition of the defendants, that order was stayed and the proceedings reopened for oral argument and reconsideration. Thereafter, upon petition of the complainant, the proceeding was reopened for further hearing, which was held with the embraced proceedings on a consolidated record.

In No. 31684, the same complainant, by complaint filed on December 6, 1954, alleges that the carload rates on the same articles from Danville, St. Malachie, and Warwick, Quebec, Canada, to Charlotte are unjust, unreasonable, and

[2] On further hearing in No. 30846.

unduly prejudicial, and that the rates maintained on the same articles from the same origins to destinations in official territory, and in western territory adjacent thereto, are unduly preferential of complainant's competitors located in those territories. We are asked to prescribe lawful rates for the future.

In No. 31683, by complaint filed on December 6, 1954, and in Nos. 31685 and 31686, by complaints filed on December 13, 1954, the complainant corporations, which likewise are engaged in the manufacture, sale, and distribution of asbestos textile products, at North Charleston, S. C., and Marshville and Davidson, N. C., respectively, allege that the carload rates on crude asbestos and asbestos fiber from Black Lake, Coleraine, Thetford Mines, Danville, St. Malachie, Warwick, East Broughton, Robertson, and St. Joseph, Quebec, Canada, to North Charleston, Marshville, and Davidson were and are unjust, unreasonable, and unduly prejudicial to the complainants, and that the rates maintained on the same articles from the same origins to destinations in official territory, and in western territory, adjacent thereto, are unduly preferential of the complainants' competitors located in those territories. In addition, the complainant in No. 31686 is engaged also in the manufacture of asbestos-cement shingles at Davidson, and alleges that the carload rates on asbestos refuse, asbestos shorts, and asbestos waste from the same origins to Davidson and destinations in official and western territories were and are unlawful in like respects. These complainants ask us to prescribe lawful rates for the future and to award reparation on shipments made during the statutory period and *pendente lite*.

The most important variety of asbestos commercially, of which there are several, is chrysotile, which constitutes about 95 percent of world production. Domestic production of asbestos in negligible, and American manufacturers are dependent upon foreign supplies. The most important commercial production of asbestos of the chrysotile variety is in an area in the Province of Quebec about 70 miles long and 5 or 6 miles wide between Danville and East Broughton, and embraces most of the origin points here concerned. Black Lake, Coleraine, Thetford Mines, Robertson, and

East Broughton are on the line of the Quebec Central Railway Company extending northeastward from Sherbrooke to Valley Junction, Quebec, Canada, and St. Joseph is on the line of the same carrier extending eastward from Valley Junction. Warwick and Danville are on the line of the Canadian National Railway Company extending northeastward from Richmond, Quebec, and St. Malachie is on the lines of the same carrier extending eastward from Diamond, Quebec, Canada. There is no record of any movement from St. Joseph, and that point will not be further considered.

On the basis of use, asbestos falls into two principal classes; namely, spinning and nonspinning fiber. Spinning asbestos is used for weaving into textiles, and under the general classification of textile uses are included prepared yarns, tape, rope, cord, wick, and thread. These various products are used in the manufacture of fireproof cloth, and friction, packing, and insulating materials, where incombustibility and thermal stability are important factors. All of the complainants manufacture such products. Nonspinning fibers consist of the shorter grades of asbestos, and are used in the manufacture of asbestos-cement shingles by the complainant in No. 31686.

The rates [3] here in issue generally apply separately on crude asbestos, asbestos fiber generally, asbestos waste, and asbestos refuse and shorts. The origins of Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton on the Quebec Central, and Danville and Warwick on the Canadian National, are grouped for ratemaking purposes, and Thetford Mines and Danville will hereinafter be used as illustrative. From both Danville and Thetford Mines to destinations in official territory, and points in western territory adjacent thereto, the defendants maintain joint through international commodity rates. The rates from Danville are substantially lower than those from Thetford Mines, although the distances do not vary greatly. To southern destinations, however, no joint through rates are maintained, and the complainants are required to pay

[3] Rates are stated in amounts per 100 pounds, and do not include the increases authorized in Ex Parte No. 175 and subsequently.

charges based on combination rates. The Canadian lines maintain proportional rates to various ports of entry in the United States, except on asbestos waste from Danville, restricted to apply only on traffic destined to points in the United States. On asbestos waste from Danville, the lowest combination results from the use of a joint through rate applicable to Baltimore, Md., as a factor. Southbound from the ports of entry and from Baltimore to the considered destinations, class rates apply on crude asbestos to all destinations, on asbestos fiber to North Charleston, and on asbestos refuse, shorts, and waste to Davidson, and commodity rates apply on asbestos fiber to Charlotte, Davidson, and Marshville.

So far as is here pertinent, the proportional rates mentioned above are published to apply from Danville to East Alburgh, Vt., and those from Thetford Mines to Newport, Vt. East Alburgh and Newport are both customs ports of entry. The line of the Canadian National extends across the international boundary about 3.1 miles to East Alburgh, where it connects with the line of the Central Vermont Railway, Inc. The line of the Quebec Central likewise extends across the international boundary about 5 miles to Newport,[4] where it connects with the Canadian Pacific. These are the only rail carriers serving Newport. Although tariff authority is obscure, the record indicates that the East Alburgh rate also applies from Danville on shipments routed to Marshville through Rouses Point, N. Y., another customs port of entry located about 0.5 mile from the international boundary, at which the shipments are interchanged by the Canadian National with The Delaware and Hudson Railroad Corporation. Until about November, 1955, shipments routed from Danville through East Alburgh, and charged at that rate, were interchanged by the Canadian National with the Central Vermont at St. Johns, Quebec, Canada, for operating convenience, and on such shipments no transportation within the United States was performed

[4] By virtue of trackage rights over the line of the Canadian Pacific Railway Company from the international boundary to Newport. The Quebec Central is a subsidiary of the Canadian Pacific Railway Company. See *Canadian Pacific Ry. Co. Lease*, 105 ICC 575, 576.

by the Canadian National. The proportional rates from Danville to East Alburgh are restricted so as not to apply at intermediate destinations in Canada.

The proportional rates from Danville on the Canadian National and Thetford Mines on the Quebec Central to East Alburgh and Newport, respectively, are 33 cents, minimum 40,000 pounds, on crude asbestos, 28 cents, minimum 40,000 pounds, and 25 cents, minimum 80,000 pounds, on asbestos fiber, and 14 cents, minimum 60,000 pounds, and 13 cents minimum 80,000 pounds, on asbestos refuse and shorts. On asbestos waste from Thetford Mines to Newport, the proportional rates are 20 cents, minimum 60,000 pounds, and 18 cents, minimum 80,000 pounds. On asbestos waste from Danville to Baltimore, the joint through rates are 53 cents, minimum 60,000 pounds, and 48 cents, minimum 80,000 pounds. In the uniform classification, crude asbestos is rated class 35 [5], minimum 50,000 pounds, asbestos fiber is rated class 35, minimum 30,000 pounds, asbestos shorts and waste are rated class 27.5, minimum 40,000 pounds, and asbestos refuse takes the same rating as asbestos shorts by the rule of analogy.

The class 35 rates applicable from East Alburgh to Charlotte, Davidson, Marshville, and North Charleston are $1.17, $1.16, $1.19, and $1.26, respectively. From Newport to the same respective destinations, the class 35 rates are $1.24, $1.19, $1.23, and $1.30. From East Alburgh and Newport to Davidson, the class 27.5 rates are 91 cents and 94 cents, respectively, and the corresponding class rate from Baltimore to Davidson is 58 cents. From both East Alburgh and Newport commodity rates of $1.06 to Charlotte and Davidson, and $1.08 to Marshville, apply on asbestos fiber. These rates are somewhat lower than the class 35 rates mentioned above, and had their inception in the publication in 1936 of the then applicable class A or eighth-class rate from Newport to Charlotte as a commodity rate to apply over routes not generally available under class-rate routing. Because of lesser increases imposed on commodity

[5] Class numbers represent percentages of the docket No. 28300 first-class rates.

rates than on class rates, and the adjustment of class-rate scales under our order in docket No. 28300, this Newport-Charlotte commodity rate ultimately controlled the going rates to Charlotte, Davidson, and Marshville over all routes. Davidson is intermediate to Charlotte from East Alburgh and Newport, and the rate to Marshville is made 2 cents more than the rate to Charlotte under the provisions of fourth-section order No. 9800. The combination of these class and commodity rates with the proportional rates applicable from the Canadian mines to the ports of entry make up the through rates borne by the complainants. Freight charges are generally prepaid at origin, are billed separately to the complainants by the consignors, and are borne in full by the former.

The principal markets for asbestos textile products manufactured by the complainants are in official territory; and a number of competitive manufacturers are also located there. Among other points, asbestos textile products are manufactured by concerns with plants at Ambler, Pa., Manville, N. J., North Brookfield, Mass., Chicago, Ill., Meredith, N. H., and Kirkwood (St. Louis), Mo. Asbestos-cement shingles are manufactured at Manville, Ambler, St. Louis, Cincinnati, Ohio, Rutherford, N. J., and Chicago Heights (Chicago), Ill. Sales competition in all of these commodities is extremely keen, and on the textile products price differences of 0.1 to 0.25 cent per pound will gain or lose sales. Manufacturers of asbestos products in official territory have for many years had available joint through international commodity rates from the Canadian mines for application on their shipments. These rates stem from an adjustment established early in the century under which rates from Danville on the Canadian National and from Sherbrooke on the Quebec Central were the same to all destinations, and the rates from Thetford Mines made 14 cents, and later 10 cents, over the Sherbrooke rates. In September, 1954, after a few rates on asbestos fiber had been established with an 80,000-pound minimum to a limited number of points, similar rates were published to numerous destinations. Except for the proportional rates applicable from the Canadian mines to Newport and East Alburgh, the com-

plainants do not have the advantage of such rates, although on asbestos fiber in numerous instances and on asbestos waste, shorts, and refuse in practically all instances their shipments equal or exceed 80,000 pounds.

The table in the appendix hereto compares representative applicable joint through rates on crude asbestos and asbestos fiber available to the complainants' competitors with the combination rates applicable to Charlotte, Davidson, Marshville, and North Charleston. It will be noted that to points in official territory the rates from Danville on the Canadian National are in all instances lower than the rates from Thetford Mines on the Quebec Central. Asbestos producers on the Quebec Central, on shipments to points in official territory, absorb these rate differences, so that for all practical purposes receivers in that territory receive the benefit of the Canadian National rates. The complainants raise no issue concerning these rate differences as such, but ask that, if relief is afforded them, similar rate differences as between Canadian National and Quebec Central origins be observed as to rates to their destinations, so that they will likewise be eligible to receive the benefit of partial rate absorption by the Quebec Central producers.

The joint through rates maintained to points in official territory bear little relation to distance. For example, the rates on asbestos fiber from Danville to Ogdensburg, N. Y., 209 miles, and to Winchester, Va., 700 miles, are the same as the rates to Ambler and Manville, 68 cents, minimum 40,000 pounds and 61 cents, minimum 80,000 pounds, and the same rates apply to practically all points in trunkline territory from New York, N. Y., to the western border of Pennsylvania; the rates on asbestos fiber from Thetford Mines to Jackson, Mich., 719 miles, and to Mundelein, Ill., 1,024 miles, are the same as the rates to Chicago; and the rates from Danville to Peoria, Ill., 1,026 miles, and to Hannibal, Mo., 1,149 miles, are the same as the rates to St. Louis.

The rates on asbestos waste, shorts, and refuse reflect similar comparisons. On asbestos refuse and shorts from Thetford Mines, the combination rates to Davidson are $1.08, minimum 60,000 pounds, and $1.07, minimum 80,000 pounds, and the joint through rates on the same respective

minimum weights are 62 cents and 57 cents to Chicago, 72 cents and 66 cents to St. Louis, and 58 cents and 53 cents to Ambler and Manville. From Danville, the corresponding rates on asbestos refuse and shorts are $1.05 and $1.04 to Davidson, 51 cents and 46 cents to Ambler and Manville, 53 cents and 48 cents to Chicago, and 63 cents and 57 cents to St. Louis. On asbestos waste from Thetford Mines, the combination rates to Davidson are $1.14, minimum 60,000 pounds, and $1.12, minimum 80,000 pounds, and the joint through rates on the same respective minimum weights are 67 cents and 62 cents to Ambler and Manville, 70 cents and 64 cents to Chicago, and 80 cents and 73 cents to St. Louis. From Danville, the corresponding rates on asbestos waste are $1.11 and $1.06 to Davidson, 53 cents and 48 cents to Ambler and Manville, 57 cents and 51 cents to Chicago, and 67 cents and 60 cents to St. Louis.

Joint through class rates are maintained from points in Quebec to points in official territory, which reflect levels approximately 10 percent higher than the docket No. 15879 class rates formerly prescribed for application within official territory. To illustrate the disparity in treatment as between the complainants and receivers of asbestos in official territory, the complainants compare the applicable joint through commodity rates based on the lowest minimum weights to official-territory points with the class rates and with combination rates constructed as are the rates to the complainants' destinations. For example, on crude asbestos from Thetford Mines to Ambler, the joint through rate is 97 cents, the class rate is $1.32, and the combination rate would be $1.12, and on asbestos fiber the commodity rate is 86 cents, the class rate $1.32, and the combination rate $1.07. On crude asbestos from Danville to Chicago, the commodity rate is $1.03, the class rate $1.30, and the combination rate $1.45, and on asbestos fiber the commodity rate is 85 cents, the class rate $1.30, and the combination rate $1.40.

Asbestos is produced at Matheson, Ontario, and Vancouver, British Columbia, Canada. The rates on crude asbestos and asbestos fiber from Matheson to Chicago and St. Louis are the same as those from Danville, for comparable

distances. From Vancouver, the rates are published on the standard transcontinental group bases, and on all grades of asbestos, crude, fiber, waste, and shorts, minimum 60,000 pounds, on December 1, 1953, were $1.54 to group A embracing Ambler and Manville, group K embracing the considered Carolina destinations, and group B embracing Pittsburgh, Pa.; $1.36 to group C embracing Michigan and Indiana points; $1.01 to group D embracing Chicago; and 93 cents to group E-4 embracing St. Louis. On April 1, 1954, to meet water competition to the Carolina destinations, the rate to group K was reduced to $1.38. This rate was likewise made applicable to group A points, and the rate to group B was reduced to $1.25, and the rate to group C to $1.13. Westbound joint through transcontinental rates are also maintained from Danville and Thetford Mines, applicable to Pacific coast groups, and the rates from these respective origins to Watson, Calif., for distances approximately 2.5 times those to the Carolina destinations, on asbestos fiber are $1.72 and $1.89, minimum 60,000 pounds, and $1.28 and $1.45, minimum 80,000 pounds; on asbestos waste, $1.13 and $1.27, minimum 80,000 pounds; and on asbestos refuse and shorts, $1.13 and $1.22, minimum 80,000 pounds.

The complainants have lost ground in recent years in their efforts to compete in the sale of asbestos textile products, particularly since the readjustment of the joint through international rates to points in official territory providing rates on a minimum weight of 80,000 pounds. The proportion of the industrywide production produced by the Thermoid Company, Southern Division, has declined from 28.33 percent in 1950 to 16.5 percent in the first 3 months of 1955. In 1949 this complainant marketed 95.6 percent of its total asbestos textile production in official territory, and in the first 6 months of 1955 that percentage dropped to 80.2. Raybestos-Manhattan, Inc., experienced a decline in its proportion of total industry production from 28.52 percent in 1951 to 22.39 percent in the first 3 months of 1955, and the proportion of its products sold in official territory dropped from 75.55 percent in 1951 to 63.49 percent in the first 6 months of 1955. In 1952, the production of asbestos

textile products by the Union Asbestos and Rubber Company represented 8.92 percent of total industry production. By 1955 this had dropped to 2.93 percent, and this complainant was finding it increasingly difficult to compete for sales in official territory, which represents the bulk of its markets. The Carolina Asbestos Company has generally maintained its position in the industry, but at the sacrifice of profits and increased sales activity at greater costs. These complainants encounter severe competition in other areas from official-territory producers, and markets lost in official territory have not been recouped elsewhere.

The Carolina Asbestos Company commenced the production of asbestos-cement shingles in 1953, in an attempt to diversify its production to offset the difficulties encountered in the marketing of asbestos textile products. Its market for these asbestos-cement shingles has been confined to North Carolina and South Carolina by reason of the competition from official territory producers, and even there the competition is keen.

In April, 1949, the southern rail lines proposed the establishment of joint rates, lower than the combination rates then in effect, from the Canadian origins to Charlotte, but the proposal was disapproved by the other lines. The defendants show that traditionally rates from Canadian origins to points in the South are based on combinations over the ports of entry, and that only in exceptional instances are joint through rates maintained. They contend, as indicated below, that the Commission has jurisdiction in these proceedings only over the rate factors applicable southbound from East Alburgh and Newport, and compare the assailed rates with rates on the same commodities from those origins to other points in the South, with which they compare favorably. They contend, also, that the westbound rates are entirely under the control of the Canadian lines, in that to Chicago, for example, the Canadian carriers, over their lines from border points in Michigan, can effect delivery without participation of United States carriers. They admit, however, that to numerous points in official territory here alleged to be preferred, delivery cannot be effected without their participation. They assert also that the rate

adjustments on asbestos first established early in the century to the western points were affected by water competition, but that the records substantiating this assertion are no longer available. There is no indication that water competition has any bearing on the maintenance of the present adjustment, particularly upon the establishment of the 80,000-pound basis of rates effected in 1954.

The defendants advert to the fact that crude asbestos is valued at $500.00 to $1,500.00 per ton, milled asbestos spinning fibers at $300.00 to $525.00 per ton, and other grades of asbestos fibers at substantially lower values, those utilized in the manufacture of asbestos-cement shingles being valued at $75.00 to $80.00 a ton, and assert that, in their view, the rate structure on asbestos requires revision in order to reflect these characteristics. They indicated at the hearing that revision of the classification basis was then in contemplation and would shortly be published. Revised classification ratings were proposed in *Classification Ratings on Asbestos, All Territories*, 299 ICC 375, and were there found not shown to be just and reasonable, and ordered canceled. The defendants show also, based on movement studies covering shipments made from the Quebec Central and Canadian National mines of asbestos fibers by grades, that the preponderance of the shipments to the Carolina destinations are of spinning grades, that the reverse is true in official and western territories, and that there are few, if any, shipments of spinning fibers from these origins to points west of Akron, Ohio. Based on the latter circumstances, it was indicated at the hearing that a revision of the joint through rates on asbestos fiber to points in official territory was contemplated so as to eliminate the application of such rates on spinning grades of asbestos fibers to points such as Chicago and St. Louis. Examination of the tariffs indicates that such revision has not been effected. The claim is made that the maintenance of the present levels of rates to points such as Manville is required because of incipient motor-carrier competition, but the record is clear that the present rate structure was effected long before motor competition was a factor.

The complainants contend that the assailed rates are unjust, unreasonable, and unduly prejudicial to them, and preferential of their competitors, and they seek the prescription of joint through rates from the Canadian origins to their destinations reasonably related to the rate structure maintained to official territory. The Canadian National contends that it participates only in the proportional rates to East Alburgh, which are not subject to our jurisdiction, and prays that for this reason the complaints as to it be dismissed. The remaining defendants likewise contend that only the rate factors southbound from Newport and East Alburgh are subject to our jurisdiction. They point out that the complainants do not assail the rates from Newport and East Alburgh only, but instead assail the combination rates, and that therefore the complaints should be dismissed.

Under the Interstate Commerce Act, our jurisdiction extends to this transportation only to the extent that it takes place within the United States. It is well settled that the rail carriers within the United States have a clear alternative with respect to their participation in international traffic. They may publish rates to or from the international boundary, in which event they are answerable only for those rates, or they may participate in international rates to or from points in Canada and thus become jointly and severally liable for any unlawfulness in such rates. *News Syndicate Co. v. New York Central R. Co.*, 275 U. S. 179; *Buckerfield's v. Atchison, T. & S. F. Ry. Co.*, 280 ICC 15. We have no jurisdiction to prescribe international rates for application partly within Canada, as sought by the complainants.

The contentions of the defendants are based on the assumption that since Newport and East Alburgh are ports of entry, they are, for all practicable purposes, border points, and that the rates therefrom to the considered destinations conform to the first alternative mentioned above. The facts indicate otherwise. Newport and East Alburgh are about 5 and 3 miles, respectively, south of the international boundary, and the proportional rates maintained by the Canadian lines to these points obligate those carriers

to provide substantial transportation service within the United States. The act makes no distinction between domestic and foreign carriers in this respect. It applies to all common carriers by railroad to the extent that such transportation takes place within the United States.

While it is true, as stated by the defendants, that in some instances this Commission, or divisions thereof, have considered points such as Rouses Point, 0.5 mile from the boundary, as border points on traffic to or from Canada, most of the cases have clearly indicated that our jurisdiction extends to or from the international boundary. In *Fruit Importers v. Atlantic Coast Line R. Co.*, 203 ICC 139, 143, the defendants challenged our jurisdiction to pass upon the reasonableness of joint through rates to Canada because they had published just and reasonable rates to Rouses Point, regarded generally as a Canadian border point. Division 4 pointed out, however, that the rates to Rouses Point were local rates and that if, as the defendants contended, they were intended to apply to the Canadian border, they should have been so published in clear and unequivocal terms. In *Newsprint Paper to Detroit*, 161 I CC 657, division 5 stated, at page 639:

It is between 2 and 3 miles over the routes of movement from the international boundary (the middle of the Detroit River) to the point in Detroit at which the shipments were delivered. No rate was or is published by the Michigan Central for that part of the transportation which took place within the United States. The Michigan Central admits that its failure to publish such a rate was in violation of section 6 of the act. We have under the circumstances jurisdiction to determine whether the complainant and the interveners were injured by such violation and, if so, to award damages resulting therefrom.

In *Charles S. Simpson Co. v. Grand Trunk W. Ry. Co.*, 129 ICC 430, division 4 considered the reasonableness of refrigeration charges from Port Huron, Mich., an interchange point between the Grand Trunk Western and the Canadian National, to Toronto, Ontario, and Montreal, Quebec, Canada, and found them not unreasonable. In *Larrowe Milling Co. v. Chatham, W. & L. E. R. Co.*, 52 ICC

145, which involved the charges on beet pulp from Wallaceburg, Ontario, to points in New York and New Jersey, reparation was awarded against the carriers that performed the haul within the United States, although it was stated that the haul performed by the Michigan Central Railroad Company to Suspension Bridge, N. Y., was almost wholly without the boundaries of the United States. In *Iron or Steel Wire, Buffalo, N. Y., to Kitchener, Ontario*, 294 ICC 515, the respondents contended that this Commission should not take jurisdiction over rates which included hauls of only 6.84 miles within the United States to the Canadian border, the distance therefrom to the Canadian destination approximating 122 miles. The contention was rejected by division 3.

In other proceedings not concerned with the matter of rates, we have noted jurisdiction over that portion of a rail line extending south of the Canadian border even though the haul within the United States was small as compared with the total mileage. In *Hereford Ry. Co. Control*, 99 ICC 7, division 4 authorized the Maine Central Railroad Company to acquire control of the Hereford Railway Company, a Canadian carrier 52.85 miles long, and to abandon that portion of the line extending 0.67 mile into Coos County, N. H. In *Status of Napierville Junction Ry. Co.*, 266 ICC 471, it was found that the respondent was not a common carrier subject to part I of the act since its operations stopped at the Canadian-United States boundary, and the haul therefrom to Rouses Point, 1.1 miles, was performed by The Deleware and Hudson Railroad Corporation.

The defendants urge that it would not be practicable or feasible to interchange traffic at the international boundaries north of Newport and East Alburgh, but we do not perceive how this would affect the situation. We have jurisdiction over the rail carriers to the extent that they operate within the United States regardless of the manner of rate publication.

As above indicated, the defendants maintain joint through commodity rates from the considered Canadian origins to numerous points in official territory. The rates

shown in the appendix hereto to Ambler apply to 26 destinations on crude asbestos for distances ranging from 377 to 678 miles, and averaging 513 miles, from Danville, and from 455 to 719 miles, averaging 553 miles, from Thetford Mines; and on asbestos fiber to over 150 destinations for distances ranging from 209 to 710 miles, averaging 493 miles, from Danville, and from 314 to 788 miles, averaging 545 miles, from Thetford Mines. The range in distances on asbestos refuse and shorts is about the same as on asbestos fiber. Thus, it appears that Ambler, where asbestos products are manufactured (529 miles from Danville and 570 miles from Thetford Mines), is a representative destination in these groupings.

From Thetford Mines to Ambler, the commodity rates of 97 cents, minimum 40,000 pounds, on crude asbestos, 86 cents, minimum 40,000 pounds, on asbestos fiber, 58 cents, minimum 60,000 pounds, on refuse and shorts, and 62 cents, minimum 60,000 pounds, on waste are about 86, 80, 76, and 81 percent, respectively, of what the rates would be if constructed on a combination basis in a manner similar to that used in constructing the rates to the considered Carolina destinations. The 80,000-pound commodity rates to Ambler on asbestos fiber, refuse and shorts, and waste are approximately 90 percent of those subject to the lower minimum weights. The rates herein found just and reasonable to Carolina destinations are constructed on a substantially similar basis. For example, the rate of $1.33 found just and reasonable on crude asbestos, minimum 40,000 pounds, from Thetford Mines to Charlotte is about 86 percent of the combination rate of $1.54. Moreover, the rates herein found just and reasonable to the Carolina destinations are substantially higher, distance considered, than the rates to numerous destinations in official territory. See, for example, the rates shown in the appendix hereto of $1.14, minimum 40,000 pounds, and $1.04, minimum 80,000 pounds, on asbestos fiber from Thetford Mines to Kirkwood (St. Louis), Mo., 1,198 miles, as compared with respective rates of $1.20 and $1.10 found reasonable herein on the same commodity from the same origin to Charlotte, 1,083 miles.

It is clear that the complainants' competitors at Ambler and other destinations in official territory are being unduly preferred to the undue prejudice and disadvantage of the complainants, and that the assailed rates are and have been unjust and unreasonable in relation to the widespread rate adjustments maintained elsewhere from the Canadian origins to destinations in the United States. The rates from the Quebec Central mines generally are on a higher level to points in official territory than those from the Canadian National mines, and appear to represent reasonable maxima. Equitable treatment of the complainants would require, however, that they be accorded rate levels from the Canadian National mines which are relatively the same as those available to receivers in official territory in order to remove the undue preference and prejudice found to exist. As stated, we have no authority to prescribe for the future joint through international rates from origins in Canada, but we may order the removal of any unlawfulness in rates on international traffic to the extent that the transportation takes place within the United States.

We find that the assailed rates, insofar as the transportation took or takes place within the United States, were and are unjust and unreasonable to the extent they exceeded and exceed from Black Lake, Coleraine, Thetford Mines, Danville, St. Malachie, and Warwick, rates of $1.33, minimum 40,000 pounds, on crude asbestos, and $1.20, minimum 40,000 pounds, and $1.10, minimum 80,000 pounds, on asbestos fiber to Charlotte; and from Black Lake, Coleraine, Thetford Mines, Robertson, East Broughton, Danville, St. Malachie, and Warwick of $1.33 to Davidson and Marshville and $1.41 to North Charleston on crude asbestos, minimum 40,000 pounds, of $1.20, minimum 40,000 pounds, and $1.10, minimum 80,000 pounds, to Davidson and Marshville, and $1.27, minimum 40,000 pounds, and $1.16, minimum 80,000 pounds, to North Charleston on asbestos fiber; and to Davidson of 82 cents, minimum 60,000 pounds, and 74 cents, minimum 80,000 pounds, on asbestos refuse and shorts, and of 88 cents, minimum 60,000 pounds, and 80 cents, minimum 80,000 pounds, on asbestos waste.

We further find that the rates on crude asbestos, asbestos fiber, and asbestos refuse, shorts, and waste, from Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton, insofar as the transportation takes place within the United States, are and will be unduly prejudicial to the complainants and unduly preferential of the complainants' competitors in official territory to the extent that the rates to the considered destinations exceed or may exceed the rates to Ambler, and destinations taking the same rates, by the following amounts: On crude asbestos 36 cents, minimum 40,000 pounds, from Black Lake, Coleraine, and Thetford Mines to Charlotte, and from Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton to Davidson and Marshville, and 44 cents, minimum 40,000 pounds, from the latter origins to North Charleston; on asbestos fiber, 34 cents, minimum 40,000 pounds, and 31 cents, minimum 80,000 pounds, from Black Lake, Coleraine, and Thetford Mines to Charlotte, and from Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton to Davidson and Marshville, and 41 cents, minimum 40,000 pounds, and 37 cents, minimum 80,000 pounds, from the latter origins to North Charleston; and to Davidson from Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton, 24 cents, minimum 60,000 pounds, and 21 cents, minimum 80,000 pounds, on asbestos refuse and shorts, and 21 cents, minimum 60,000 pounds, and 18 cents, minimum 80,000 pounds, on asbestos waste.

We further find that on crude asbestos, asbestos fiber, and asbestos refuse, shorts, and waste, the rates from Danville, St. Malachie, and Warwick, insofar as the transportation takes place within the United States, are and will be unduly prejudicial to the complainants and unduly preferential of the complainants' competitors in official territory to the extent that the rates to the considered Carolina destinations fail to reflect differentials under the rates thereto from Black Lake, Coleraine, Thetford Mines, Robertson, and East Broughton resulting from the foregoing findings which are no different than those reflected in the rates from the same respective origins to Ambler and destinations taking the same rates.

We further find that the complainants in Nos. 30846, 31683, 31685, and 31686 made shipments as described and paid or bore the charges thereon, were damaged, and are entitled to reparation in the amount of the difference between the charges collected and those that would have accrued on the bases herein found to have been just and reasonable. The complainants should comply with rule 1.100 of the General Rules of Practice. In instances where shipments from Danville and Warwick were interchanged by the Canadian National at St. Johns, and no transportation within the United States was performed by that carrier, it is not liable for the payment of reparation. See *San Diego Oil Products Corp. v. Holton I.-U. R. Co.*, 164 I. C. C. 505, 510.

To all of the rates resulting from the findings herein may be added the applicable general increases authorized on and subsequent to March 12, 1951.

An order will be entered vacating the prior order in No. 30846, and requiring the removal of the undue preference and prejudice found to exist.

CHAIRMAN FREAS dissents.

COMMISSIONERS MITCHELL and GOFF did not participate in the disposition of this proceeding.

APPENDIX

To—	Crude asbestos				Asbestos fiber			
	From Danville, Quebec, Canada		From Thetford Mines, Quebec, Canada		From Danville, Quebec, Canada		From Thetford Mines, Quebec, Canada	
	Short-line distance	Rates,[1] minimum 40,000 pounds	Short-line distance	Rates,[1] minimum 40,000 pounds	Rates,[1] minimum 40,000 pounds	Rates,[1] minimum 80,000 pounds	Rates,[1] minimum 40,000 pounds	Rates,[1] minimum 80,000 pounds
	Miles	*Cents*	*Miles*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Manville, N. J.	480	68	521	97	88	61	98	79
Ambler, Pa.	529	68	570	97	88	61	98	79
Chicago, Ill.	907	103	987	132	85	77	101	98
Kirkwood (St. Louis), Mo.	1,118		1,198		97	87	114	104
Richmond, Va.	782		823		100	90	118	106
Charlotte, N. C.	1,042	130	1,083	154	134	131	134	131
Davidson, N. C.	1,031	149	1,072	152	134	131	134	131
Marshville, N. C.	1,068	152	1,109	156	136	133	136	133
North Charleston, S. C.	1,173	159	1,216	168	154	151	158	155

[1] On crude asbestos to Charlotte, Davidson, Marshville, and North Charleston the carload minimum weights are 40,000 pounds to East Alburgh or Newport, Vt., and 50,000 pounds beyond. On asbestos fiber the minimum weights to the same points are 40,000 or 80,000 pounds to East Alburgh or Newport, and 80,000 pounds beyond.

Appendix F

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 7th day of May, A. D. 1958.

No. 30846

THERMOID COMPANY, SOUTHERN DIVISION

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

No. 31683

RAYBESTOS-MANHATTAN, INC., GENERAL ASBESTOS AND RUBBER DIVISION

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

No. 31684

THERMOID COMPANY, SOUTHERN DIVISION

v.

SAME

No 31685

UNION ASBESTOS & RUBBER COMPANY

v.

SAME

No. 31686

CAROLINA ASBESTOS COMPANY

v.

SAME

These proceedings being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report and the prior report in No. 30846, 288 ICC 793, are hereby

referred to and made a part hereof; and the Commission having found in the report of even date that the rates on crude asbestos, asbestos fiber, and asbestos refuse, shorts, and waste, in carloads, from Black Lake, Coleraine, Thetford Mines, Robertson, East Broughton, Danville, St. Malachie, and Warwick, Quebec, Canada, to certain destinations in the United States, are and for the future will be, unduly prejudicial to the complainants and unduly preferential of the complainants' competitors to the extent indicated in said report of even date:

It is ordered, That the defendants named in the complaints, according as they participate in the transportation within the United States, be, and they are hereby, notified and required to cease and desist, on or before August 14, 1958, and thereafter to abstain, from practicing the undue prejudice and preference referred to in the preceding paragraph hereof.

It is further ordered, That said defendants, according as they participate in the transportation within the United States, be, and they are hereby, notified and required to establish, on or before August 14, 1958, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed under section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, rates, regulations, and practices which will prevent and avoid the undue prejudice and preference referred to in the first paragraph hereof.

And it is further ordered, That the order of May 25, 1953 in No. 30846, be, and it is hereby, vacated and set aside, and that this order shall continue in force until the further order of the Commission.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

Appendix G

ORDER

INTERSTATE COMMERCE COMMISSION

No. 30846

THERMOID COMPANY, SOUTHERN DIVISION

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

No. 31683

RAYBESTOS-MANHATTAN, INC.
GENERAL ASBESTOS AND RUBBER DIVISION

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

No. 31684

THERMOID COMPANY, SOUTHERN DIVISION

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

No 31685

UNION ASBESTOS & RUBBER COMPANY

v.

SAME

No. 31686

CAROLINA ASBESTOS COMPANY

v.

SAME

IN THE MATTER OF DEFENDANTS' PETITION TO SHORTEN THE NOTICE UPON WHICH ACTION REQUIRED BY ORDER MAY BE TAKEN.

PRESENT: KENNETH H. TUGGLE, Chairman, to whom the above-entitled matter has been assigned for action thereon.

The Commission, Division 3, issued its report in No. 30846, 288 ICC 793, decided May 25, 1953, and the entire Commission issued its report in the above-entitled pro-

ceedings including No. 30846, on further hearing, 303 ICC 743, decided May 7, 1958. Upon consideration of the records in these proceedings, and a petition of the defendant railroads for further modification of the order of May 7, 1958, to authorize the defendants to comply therewith upon not less than 10 days' notice, and for good cause shown:

It is ordered, That the petition be, and it is hereby, granted, and that the order entered in these proceedings on May 7, 1958, as modified, requiring the defendants to take certain action on or before March 26, 1959, upon not less than 30 days' notice, be, and it is hereby, further modified so as to authorize the action upon not less than 10 days' notice, without change in the effective date.

Dated at Washington, D. C., this 19th day of February, A. D., 1959.

By the Commission, Chairman Tuggle.

HAROLD D. McCOY,
Secretary.

(SEAL)

Appendix H

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 11th day of March, A. D., 1959.

No. 30846
THERMOID COMPANY, SOUTHERN DIVISION
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

No. 31683
RAYBESTOS-MANHATTAN, INC.
GENERAL ASBESTOS AND RUBBER DIVISION
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

No. 31684
THERMOID COMPANY, SOUTHERN DIVISION
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

No. 31685
UNION ASBESTOS & RUBBER COMPANY
v.
SAME

No. 31686
CAROLINA ASBESTOS COMPANY
v.
SAME

It appearing, That the Commission, Division 3, issued its report in No. 30846, 288 ICC 793, decided May 25, 1953, and the entire Commission issued its report in the above-entitled proceedings, including No. 30846, on further hearing, 303 ICC 743, decided May 7, 1958;

It further appearing, That defendants on February 20, 1959, filed a petition for leave to file a petition seeking reopening and reconsideration and concurrently therewith filed a petition, dated February 20, 1959, for reopening and reconsideration in the above-entitled proceedings; and reply of complianants, dated March 12, 1959;

Upon consideration of the record in the above-entitled proceedings and the foregoing pleadings:

It is ordered, That the petition for leave to file be, and the same is hereby, granted, and that the petition for reconsideration be, and the same is hereby, filed of record.

It is further ordered, That the petition for reopening and reconsideration be, and the same is hereby, denied, for the reason that the findings of fact and conclusions in the report of the Commission are fully supported by the evidence and that the matters set forth in the petition do not constitute sufficient grounds to warrant the action sought.

And it is further ordered, That the report and order of the Commission in these proceedings is hereby clarified to provide that the finding in the Commission's report that the rates from Quebec Central mines to points in official territory which "appear to represent reasonable maxima" relates only to the finding of unreasonableness in the past under Section 1 of the Interstate Commerce Act and to the award of reparation.

By the Commission.

HAROLD D. McCOY
Secretary

(SEAL)

Appendix I

Statutes Involved

Section 1 (1), (a) and (2) (49 U.S.C. §1(1)(a) and (2))

(1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment;

—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States,

Section 1(4) and (5) (49 U.S.C. § 1(4) and (5)).

(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or

charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 2 (49 U.S.C. §2).

That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3(1) (49 U.S.C. §3(1)).

(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 6(1) and (7) (49 U.S.C. § 6(1) and (7)).

(1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation.

(7) No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

Section 8 (49 U.S.C. § 8).

That in case any common carrier subject to the provisions of this part shall do, cause to be done, or permit to be done any act, matter, or thing in this part prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this part required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in con-

sequence of any such violation of the provisions of this part, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Section 13(1) (49 U.S.C., § 13(1)).

(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this part, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts: whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Section 16(1) (49 U.S.C., § 16(1)).

(1) That if, after hearing on a complaint made as provided in section thirteen of this part, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this part for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.